The

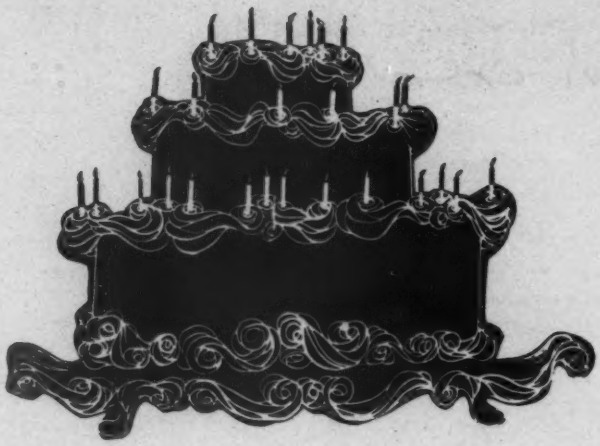
ORPORATION JOURNAL

Trademark ®

the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, CT Corporation System and associated companies deal with and act for lawyers exclusively.

22, No. 3 December 1957—January 1958 Complete No. 412

ished by The Corporation Trust Company and Associated Companie



65

CT, on its 65th birthday, is proud—and thankful.

Proud of its accomplishments.

Thankful for the acceptance it has had from the lawyers of America since its organization in 1892.

The toast at our birthday party will be to *you*.

The
CORPORATION JOURNAL

Trademark ®

DECEMBER 1957—JANUARY 1958

Contents

Recent Decisions

Is the state "next door" to you one of those which has taken on a new look? It will pay you to check before proceeding with a corporation filing.

Don't let closeness lull you into quick decisions based on past experience. Too many new and revised laws affecting corporations have been added to the statute books during the past few years. Too many new rulings and regulations governing incorporation, qualification, amendment, dissolution, etc., have been issued.

Play it safe. Before going ahead, get complete information—today's information—on any kind of state corporation filing from the CT office nearest you. It's free. It's for lawyers only.

what constitutes doing business

Fulfilling Federal Contracts—Federal Areas Qualification

FREQUENTLY, a question arises concerning the necessity of the qualification of a foreign corporation which is to carry out a Federal contract within a Federal area.

The Constitution of the United States, in Clause 17, Section 8, Article 1, prescribes that Congress shall have power:

> "To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."

In some decisions, the existence of the state legislation ceding the area to the United States has been regarded as sufficient to divest the state of control over it (except, possibly, for the retention of the right to serve process issued out of the state courts).[1] In other decisions, it has been held that a general law consenting to the purchase of land by the United States is not conclusive evidence of complete loss of state sovereignty over purchased areas, as the Government may, by its acts, subsequently indicate it does not regard the state as having yielded exclusive jurisdiction to the Government.[2]

In at least one instance, it has been held that state laws enacted prior to the cession would remain in force until abrogated by the United States, while those subsequently enacted had no application to the area ceded.[3]

A number of Attorneys General have ruled on the subject of the necessity of qualification of foreign corporations engaged in work for the Federal Government in Federal areas. The trend of such rulings is to indicate that qualification is required.[4] There are rulings to the contrary in Kentucky, Maryland, and North Carolina.[5] However, the Maryland and North Carolina rulings place stress upon the confinement of such corporate activity to the Federal area and imply that related activity within the state borders, but outside the limits of the Federal area, would require consideration of the necessity of qualification.

---

[1] *State v. Blair,* (Ala.) (1939) 191 So. 237, (*Maxwell Field*); *Standard Oil Co. of Cal. v. California,* (Cal.) (1934) 291 U. S. 242, 54 S. Ct. 381, (*The Presidio of San Francisco*); *Surplus Trading Co. v. Cook,* (Ark.) (1930) 281 U. S. 647, 50 S. Ct. 455, (*Camp Pike*); *Murray v. Joe Gerrick & Co. et al.,* (1934) 291 U. S. 315, (a Navy Yard); *Webb v. J. G. White Engineering Corp. et al.,* (Ala.) (1920) 85 So. 729 (*Muscle Shoals*).

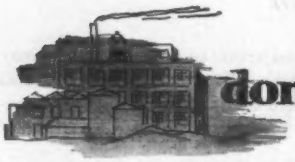
[2] *Atkinson v. State Tax Commission et al.,* (Ore.) (1938) 303 U. S. 20, 58 S. Ct. 419 (Bonneville project); *Motor Transport Co. v. McCanless,* (1945) 189 S. W. 2d 200 (Camp and Ordnance Plant).

[3] *Pound v. Gaulding,* (Ala.) (1939) 187 So. 468, (Fort McClellan).

[4] Kentucky (CCH) State Tax Reporter, ¶ 2-201.45; North Carolina STR, ¶ 2-012.43; Oregon STR, ¶ 2-012.43; Tennessee STR, ¶ 2-012.431; Utah STR ¶ 2-012.25.

[5] Kentucky STR, ¶ 2-012.47; Maryland STR, ¶ 2-200.15; North Carolina STR, ¶ 2-012.432.

Where investigation reveals that there is no state legislation ceding such an area to the Federal Government, or no acceptance by the government of a ceded area, the carrying on of business within the area would appear to indicate a need for qualification. Even where there is such legislation and acceptance, it may be that collateral intrastate activities may be carried on within the state, but outside the Federal-owned area, which would necessitate qualification.



domestic corporations

ALABAMA

Stockholder of record held real party in interest empowered to bring action to enforce declaration of dividends.

Plaintiff below, a record owner of 37 out of a total of 150 shares of the capital stock of the defendant company, an Alabama corporation, sought to enforce the declaration of a reasonable dividend to the stockholders of record. He appealed from an adverse decision of the federal District Court for the Middle District of Alabama dismissing the action.

This judgment was reversed by the United States Court of Appeals, Fifth Circuit. That court concluded that, as the 37 shares of stock stood in plaintiff's name, he was the real party in interest and could prosecute an action to enforce the declaration of dividends, even though he might be the nominee for another person. Authority was found in an Alabama Supreme Court decision that, in appropriate circumstance, a minority stockholder might invoke the jurisdiction of a court of equity to compel the declaration of dividends. A question also presented was whether a majority of the corporation's board of directors were indispensable parties to an action by a shareholder to compel the declaration of dividends. No Alabama case being cited, the court observed: "The corporation is the party from whom any dividends that may be declared must be recovered. Through service upon the corporation, the directors have notice and an opportunity to appear or to intervene if they so desire. The fact that some of the directors may not be amenable to process should not preclude relief, if the plaintiff is able to prove a meritorious case."

Doherty v. The Mutual Warehouse Company et al., 245 F. 2d 609. Cornelius H. Doherty, in pro. per. James J. Carter, Henry C. Meader, Thomas B. Hill, Jr., and Hill, Hill, Stovall & Carter of Montgomery, for appellees.

DELAWARE

By-law, permitting president to call special stockholders' meeting for any purpose, construed.

A recent decision involved a by-law which gave the president of a corporation power to call special meetings of the stockholders "for any purpose or purposes." The Chancellor regarded this broad and all-embracing language as including the power to call a meeting to fill director vacancies and, under the circumstances before the court, as sufficient to authorize, further, among the proposed purposes of the meeting, a proposal to amend the by-laws to increase the number of directors.

Another stated purpose of the proposed stockholders' special meeting was to remove two named directors and to fill such vacancies. The court concluded that, while no statutory provision may exist for the removal of directors by stockholder action, stockholders have the implied and inherent power, as a matter of Delaware law, to remove directors for cause, and that, in the absence of by-law language to the contrary, stockholders have the right, between annual meetings, to elect directors to fill newly created directorships.

The court also indicated, among other things, that where the procedure adopted to remove a director for cause is invalid on its face, a stockholder can attack such matters before the meeting is held. Also, where a question of director removal for cause is to be presented for stockholder consideration, an opportunity must be provided such directors to present their defense to the stockholders by a statement which must accompany or precede the initial solicitation of proxies seeking authority to vote for the removal of such director for cause. If not provided, then such proxies may not be voted for removal. And the corporation has a duty to see that this opportunity is given the directors at its expense.

Campbell v. Loews, Incorporated et al., Court of Chancery, New Castle County, September 19, 1957. Henry M. Canby of Richards, Layton & Finger and Arthur G. Logan and Aubrey B. Bank of Logan, Marvel, Boggs & Theisen of Wilmington, and Milton S. Pollack of New York City, for plaintiff. David F. Anderson of Berl, Potter & Anderson of Wilmington, and Louis Nizer of Phillips, Nizer, Benjamin and Krim of New York City and Benjamin Melniker of New York City, for corporate defendant. (134 A. 2d 852.)

Stockholder held not entitled to cumulative preferred dividends related to periods prior to the issuance of his stock by his corporation.

In *Blandin v. United North and South Development Company*, 121 A. 2d 686, (The Corporation Journal, June—July, 1956, page 224), the Court of Chancery, New Castle County, held that a stockholder was not entitled to cumulative preferred dividends related to periods prior to the issuance of his stock by the corporation.

An amendment of the charter, adopted in 1937, provided that preferred stock Series "A", a type subsequently acquired by the plaintiff should "pay dividends at the rate of six per cent (6%) per annum out of its earnings, but when not so earned and paid, the dividend so provided shall be cumulative. Said dividends shall be paid annually beginning the Fif-

teenth (15th) day of March, 1938." On March 2, 1945, 100 shares of theretofore unissued Series "A" stock were issued to J. Kenneth Blackmar. In 1951, Blackmar sold his shares and the plaintiff below bought them. On September 8, 1954, the corporation declared a dividend on the shares of Series "A" and Series "B" preferred stock of all dividends unpaid and accrued to March 15, 1954. Plaintiff was tendered all dividends accrued on his shares from March 2, 1945, the date of issuance, to March 15, 1954. He demanded, however, that he be paid additional dividends for the period from March 15, 1938, to March 2, 1945. The corporation refused his demand, and he brought suit.

Upon appeal, the Supreme Court of Delaware has affirmed the judgment of the Court of Chancery. The court regarded as unacceptable a contention of the plaintiff that it was the intention of the framers of the charter that a dividend liability should accumulate on unissued stock.

Blandin v. United North and South Development Company, 134 A. 2d 706. Ernest S. Wilson, Jr., of Morford & Bennethum of Wilmington, for appellant. John P. Sinclair of Berl, Potter & Anderson of Wilmington, for appellee.

ILLINOIS

State Supreme Court upholds Secretary of State's discretion in determining whether corporate names are "deceptively similar".

The plaintiffs applied for a corporate charter under the names of "Steel Company of Ohio," "Steelco Manufacturing Company," or "Steel Manufacturing Company." The defendant, as Secretary of State of Illinois, refused to issue the charter on the grounds that the names were "deceptively similar" to the names "Ohio Steel Products Co.," "Steel-Cor Manufacturing Company," "Steel Doors Manufacturing Company" and "Steel-Parts Manufacturing Company," previously registered corporations. The plaintiffs then filed a petition in the circuit court of Cook County for an order directing the defendant to issue a charter pursuant to the application. The trial court ordered the defendant to issue to the plaintiffs a charter under the name of "Steel Company of Ohio" and the Appellate Court affirmed that order.

Upon appeal to the Supreme Court of Illinois, the court observed that sections 9 and 152 of the Business Corporation Act vest the Secretary of State with the discretion in determining if corporate names are "deceptively similar" for the protection of the public and that "our courts have preferred to extend the benefit of doubt, if such doubt exists, in favor of the Secretary of State." The court ruled that the action of the defendant was a reasonable exercise of the discretion vested in him. The judgment of the Appellate Court affirming the order of the circuit court was reversed.

Berdelle, et al. v. Carpentier, Secretary of State, 143 N. E. 2d 53. Latham Castle, Attorney General, (William C. Wines, Raymond S. Sarnow, A. Zola Groves and Theodore P. Fields, Asst. Attorneys General, of counsel), for appellant. Richard G. Raysa of Chicago, for appellees.

NEW YORK

Officers elected at improperly called meeting ruled not entitled to custody of corporate books, records and property.

This was a proceeding, under Article 78, Civil Practice Act, to direct the respondents to turn over the books, records and other property of the petitioner corporation to the officers elected at a meeting held on March 12, 1957. The respondents claimed to be officers of the corporate petitioner and that, as such officers, the property was lawfully in their custody, petitioner contending that the respondents were removed as officers at a meeting of the stockholders.

The petition alleged that notices signed by two of three directors were mailed on March 6, 1957, calling for a meeting of all the stockholders for March 12, 1957, and also for a directors' meeting for the same day, but at a later time. "These notices," observed the Supreme Court, Special Term, New York County, "do not comply with sections 45 and 55 of the Stock Coropration Law, nor with the by-laws of the corporation, and such defect is apparent on the face of the petition. While the respondents are not entitled to custody and control of books, records and other property as individuals, yet as officers such custody may be retained in the absence of a showing of any other representatives or officers of the corporation being entitled to their custody." The meeting being deemed a nullity for failure to comply with the statute, the petition was dismissed.

Janaug, Inc. v. Szlapka, 162 N. Y. S. 2d 668. Gifford, Wood, Carter & Hayes (Walter S. Long, Jr., of counsel), of New York City, for petitioner. Kissam & Halpin (James H. Halpin and Joseph O'Loughlin, of counsel), of New York City, for respondents.

PENNSYLVANIA

Dissenting stockholders of corporation which did not comply with merger statute but effected sale of its assets to another corporation, held to retain rights, under common law principles, to receive payment for their shares.

Plaintiffs were record holders of shares of common stock of defendant Henry Disston & Sons, Inc., and brought suit for the fair value of their stock as of November 14, 1955, the day prior to the special meeting of shareholders of Disston at which an "Agreement and Plan of Reorganization" with defendant H. K. Porter Company, Inc., dated October 15, 1955, was approved by a majority of the shareholders. Plaintiffs, who had been notified of the special meeting of the shareholders for the purpose of voting on the "Agreement and Plan of Reorganization," had, prior to the scheduled date of the meeting, notified the Disston company in writing that they objected to and dissented from the proposed agreement. They did not vote in its favor and promptly after the consummation of the plan made demand upon both corporate defendants for payment of the fair value of their stock in Disston, which defendants refused to pay.

Pursuant to the Agreement mentioned made between the defendants, Disston agreed to transfer substantially all of its assets to a wholly-owned subsidiary of the other defendant under arrangements provided in the Agreement, under which Disston was to be dissolved and distribution to be made to its shareholders. Plaintiffs alleged there was, in effect, a de facto merger resulting from the transfer of the assets of their company, a view which was adopted by the United States District Court, E. D. Pennsylvania, while defendants contended the transfer was governed by Section 311 of the Pennsylvania Business Corporation Law, which regulates the voluntary transfer of corporate assets, under which no remedy was granted to stockholders protesting the sale of all the corporate assets.

The court, ruling in favor of the plaintiffs, observed that if corporations do not choose the statutory method of merger and attempt to follow the procedure under Section 311 so that the transaction should appear to be a sale of assets, rather than a merger, then dissenting shareholders, though defeated from their right to the statutory remedy of appraisal by three disinterested persons appointed by the Court of Common Pleas, still cannot lose their rights to receive payment for their shares under common law principles.

Troupiansky et al. v. Henry Disston & Sons, Inc. et al., 151 F. Supp. 609. Wolf, Block, Schorr & Solis-Cohen, of Philadelphia, for plaintiffs. Lewis M. Stevens and John C. Gilpin of Philadelphia, for defendant Henry Disston & Sons, Inc. Philip H. Strubing of Philadelphia, for defendant H. K. Porter Co., Inc.

Down payment of 5% of stock subscription held to bind subscriber to pay for all shares contracted for, and not to receive merely 5% of such shares, subject to his withdrawal of offer to pay for remaining 95%.

Plaintiff corporation brought suit to recover a balance of $47,547.50 due on a subscription agreement executed by its subscriber, the defendant below. The agreement called for a 5% payment on account of the subscription, which was made. Subsequently the defendant wrote the plaintiff company withdrawing his offer to purchase the remaining 95% of stock. He took the position that the agreement was a divisible one-partly executed and partly executory, maintaining that the 5% paid was not a down payment on the entire contract, the receipt of which constituted an acceptance of the whole contract by the plaintiff company, but an outright purchase of the 5% of the stock. In this respect, he maintained, the contract was therefore executed, being executory as to the remaining 95%.

The Supreme Court of Pennsylvania felt that a reading of the contract refuted the defendant's interpretation, observing: "The acceptance and the depositing of the defendant's check, representing down payment on the entire contract, bound the plaintiff irrevocably. Why should it not equally bind the defendant? Once two parties to an agreement meet on the pier of mutual consideration and agree to sail together, neither can prevent the ship from lifting anchor and setting out on the sea of financial responsibility, one to the other." A judgment for the corporation was affirmed.

Penn-Allen Broadcasting Company v. Taylor, 133 A. 2d 528. Claude T. Reno, Martin J. Coyne and Orrin E. Boyle of Allentown, for appellant. Eugene K. Twining, Harry A. Dower, Perkin, Twining & Dower and James D. Christie of Allentown, for appellee.

TEXAS

Court affirms judgment requiring corporation to pay dividend in a specified amount.

This was an appeal from a judgment of the District Court, Dallas County, requiring Machinery Sales and Supply Company and T. W. Patton, the president and dominant stockholder thereof, to pay a dividend in the amount of $112,000 on the capital stock of the corporation.

The Court of Civil Appeals of Texas, Waco, reviewed prior proceedings in this litigation. These involved extended hearings in the trial court and action before the State Supreme Court resulting in an order that the corporation pay a dividend, reasonable and substantial, and further hearings to determine an amount to be recommended by a Master in Chancery. The amount recommended was $112,000, which was made the judgment of the trial court. This judgment was affirmed by the Court of Civil Appeals.

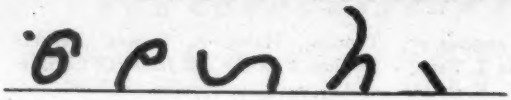
Patton et al. v. Nicholas et al., 302 S. W. 2d 441. C. C. Renfro of Dallas, for appellants. William S. Campbell of Dallas for appellees.

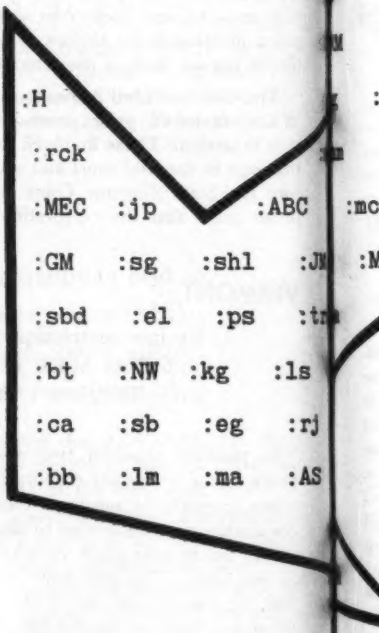
VERMONT

By-law restriction as to transfer of stock, never embodied in stock certificate, ruled to have no force and effect, even though buyer had knowledge and notice thereof.

The plaintiff acquired two shares of stock in the defendant corporation. By a suit in equity he sought to compel the corporation to transfer title to him of the shares and to issue a new stock certificate in his name. The defendants contended that the plaintiff was not entitled to the relief he sought as he had not complied with a restriction in the by-laws, amended shortly before the purchase, requiring that stock be first offered for sale to the board of directors to be purchased for the corporation or by the directors themselves. This restriction was never embodied in, written, printed or stamped upon the stock certificates in question. It was pointed out that the plaintiff knew, at the time of purchase, that a by-law had been adopted which in some way restricted the sale of stock. The trial court decreed in favor of the plaintiff and the defendants excepted.

The Supreme Court of Vermont noted that Vermont statute required that the stock certificate itself state any "restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation", and that it was not observed by the defendant corporation. Also, the court observed, that the by-law itself not only required that the restriction be stated on the stock certificate, but its langauge made it clear that it was only after a stock certificate



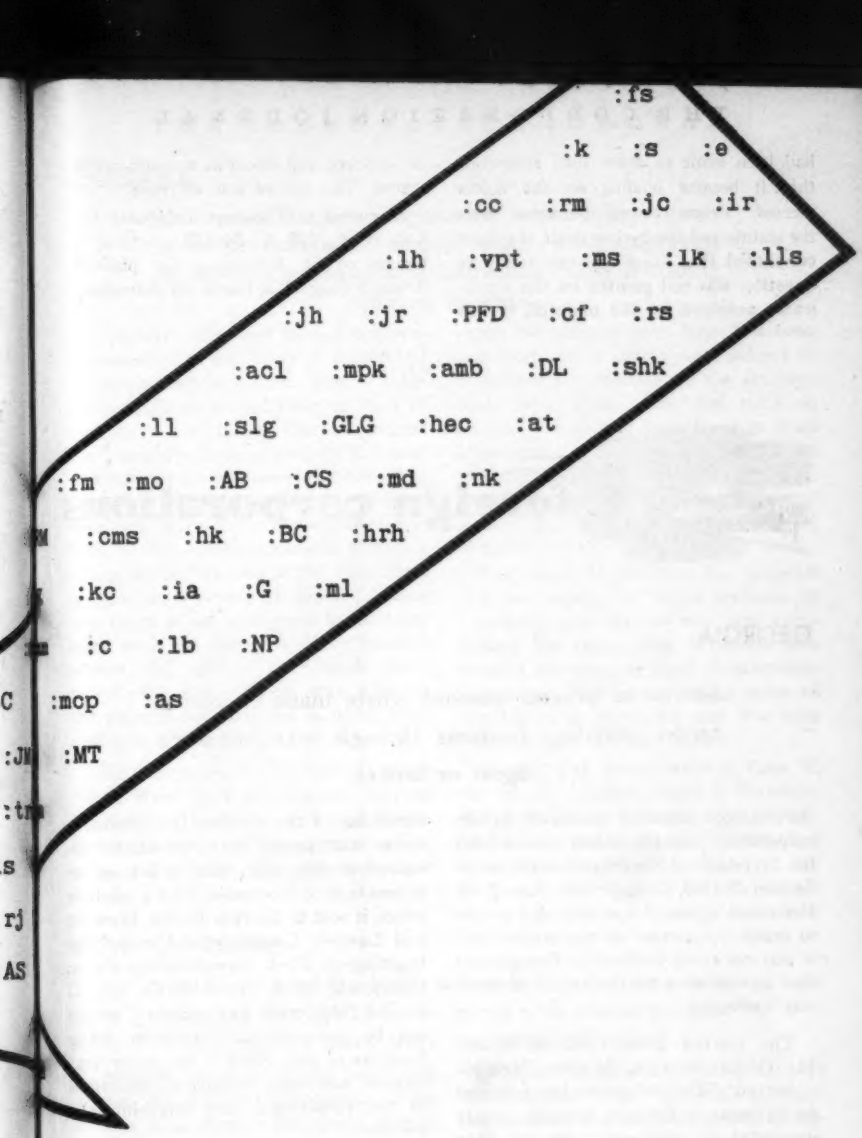


These also spell CT.

They are a few of the "signatures" of the stenographers in the CT offices across the continent.

How they work to get *your* work done on *your* schedule!

:am


:fs
:k :s :e
:cc :rm :jc :ir
:lh :vpt :ms :lk :lls
:jh :jr :PFD :cf :rs
:acl :mpk :amb :DL :shk
:ll :slg :GLG :hec :at
:fm :mo :AB :CS :md :nk
:cms :hk :BC :hrh
:kc :ia :G :ml
:c :lb :NP
:mcp :as
:MT

had been made to show such restriction that it became binding on the holder thereof. From reasons stemming from the statute and the by-law itself, the court concluded that since the restriction in question was not printed on the certificates acquired by the plaintiff, it was of no force and effect as to such certificates. The decree was affirmed.

Hopwood v. Topsham Telephone Co., Ltd. et al., 132 A. 2d 170. Arthur L. Graves of St. Johnsbury, for plaintiff. Abare & Sargent of Barre, for defendants.

foreign corporations

GEORGIA

Service of process quashed where made on corporation soliciting business through manufacturer's agent or broker.

Service upon defendant unlicensed foreign corporations was effected by service upon the Secretary of State as its agent under Section 22-1508, Georgia Code Annotated. Defendant appeared specially and sought to quash the service on the ground that it was not doing business in Georgia and that service upon the Secretary of State was ineffectual.

The United States District Court, M. D. of Georgia, Macon Division, observed: "The defendant has solicited no business in Georgia through agents domiciled or stationed here, or sent here. A manufacturer's agent, or broker, procured the sales of all items, except the minor repair and supply items and these were ordered by the Georgia customers directly from the defendant's home office and place of business in Illinois. The only 'local performance of contract obligations' done by defendant in Georgia was the furnishing of the 'services of demonstrator to start sander' as to the sander involved in this case, and to set up or demonstrate in November, 1954 a machine which it sold to Georgia Pacific Plywood and Lumber Company, and under the teaching of *York Manufacturing Co. v. Colley*, 247 U. S. 21, 38 S. Ct. 430, 62 L. Ed. 963, such performance would not be sufficient to constitute doing business in this State." An order was directed sustaining defendant's objections to the jurisdiction and quashing the service.

Georgia Lumber & Veneer Corporation v. Solem Machine Company, 150 F. Supp. 126. Jones, Sparks, Benton & Cork of Macon, Alex S. Boone, Jr. of Irwinton, Aaron L. Stein of Chicago, Ill., for plaintiff. Martin, Snow & Grant of Macon, for defendant.

LOUISIANA

Unlicensed foreign corporation maintaining agents to solicit orders for nursery stock, with shipments made from points outside Louisiana, ruled not doing business in state.

The plaintiff unlicensed foreign corporation appealed to the Court of Appeals of Louisiana, Second Circuit, from a judgment sustaining an exception of want of capacity leveled at it. The corporation was charged with doing business in Louisiana without having met the qualifications therefor. The trial court's decision stemmed from the provision of LSA-R.S. 12:211, which prohibits a corporation doing business in the state from presenting any judicial demand before any court of the state until it has complied with the laws for doing business within the state. The single issue raised, the court noted, was whether the plaintiff was engaged in doing business within Louisiana.

The facts revealed were that the plaintiff, a New York corporation, had no property in Louisiana and that it employed four district managers or salesmen in the state. The salesmen took orders for nursery stock from Louisiana customers, which orders were subject to acceptance or rejection at the corporation's New York office, and stock so ordered was shipped from there or from Mississippi. As a method of selling, the salesmen made a sketch, to scale, of the customer's premises with the suggested location and the number of plants to be ordered.

The court found that the plaintiff was not engaged in doing business in Louisiana and that all the acts comprising the transaction involved constituted an integral part of interstate commerce. The exception of want of capacity was overruled and the case remanded to the trial court.

Quaker Hill, Incorporated v. Guin, 95 So. 2d 370. Hudson, Potts & Bernstein, Billye Adams of Monroe, for appellant. McHenry, Lamkin, Snellings & Beard of Monroe, for appellee.

NEW HAMPSHIRE

Service upheld where solicitation of orders was effected through factor as agent who conducted promotion sales work on behalf of seller.

A question raised on appeal before the United States Court of Appeals, First Circuit, was whether the named defendant was transacting business in New Hampshire so as to be subject to service of process there. This company, with its manufacturing plant in New Jersey, sold its products in New Hampshire through an independent regional sales representative, which also handled other accounts. A single employee regularly contacted and solicited business firms in New Hampshire on behalf of that defendant's products, furnishing defendant's advertising material and samples, giving technical advice and assistance. Orders were sent to defendant which shipped the product to the customer, determining whether the purchase could be made on credit.

The Court of Appeals, which concluded that the named defendant was subject to service in New Hampshire, and that the District Court had juris-

diction to entertain the action, found that the defendant's product which occasioned the alleged injury to the plaintiff, was registered under the New Hampshire Economic Poisons Law, without which registration it could not be sold legally in New Hampshire. It was found also that there was a continuous and systematic course of business activity in the state by the defendant, including efforts to increase sales, in addition to the activities involving the solicitation of orders.

W. H. Elliott & Sons Co., Inc. v. Nuodex Products Co., Inc., 243 F. 2d 116. Stanley M. Brown of Manchester; Mc Lane, Carleton, Graf, Greene & Brown of Manchester, on the brief, for W. H. Elliott & Sons Co., Inc. Joseph S. Ransmeier of Concord, Sulloway, Jones, Hollis & Godfrey of Concord, on the brief, for Nuodex Products Co., Inc. Robert W. Upton of Concord, Sanders & Upton of Concord on the brief, for E. & F. King & Co., Inc. John H. Sanders, Concord, for cross-claimant, appellant. (*Petition for writ of certiorari filed in the Supreme Court of the United States, June 22, 1957; Docket No. 216. Petition for writ of certiorari denied, October 14, 1957.*)

OKLAHOMA

Unlicensed foreign corporation, with agent soliciting orders in state, ruled subject to service of process where made, under statute, upon state official as its statutory agent.

Service of process was effected upon defendant foreign corporation by serving the Secretary of State as provided in O. S. 1951, Sec. 472. The defendant entered a special appearance, moving to quash the service and alleging the court had no jurisdiction over it, for the reason defendant had never been domesticated in Oklahoma and had never kept an office, agent or representative in the state. The company stated it sold its machines to one L. I. Smith, an independent contractor or independent distributor who resold the machines to his customers; also that he took orders for the machines and then directed the defendant to have the machines shipped direct to his customers from the factory and charge his account for such sales, this being the only business relation the company ever had with him. The evidence, however, indicated, that upon solicitation by Smith, plaintiff had signed a purchase order, directed to the defendant in Colorado, asking for the shipment of three machines to plaintiff, payment being made to the defendant with the purchase order. Plaintiff sought in the lower court to rescind the purchase contract, and to recover the consideration paid, having found the machines did not work satisfactorily, even after repairing by defendant, and alleging his payment had been made on false and fraudulent representations of the seller in inducing him to purchase the property.

The Supreme Court of Oklahoma affirmed a judgment in favor of the plaintiff, regarding the evidence as sufficient to show defendant was doing business in the state to such an extent as to make it amenable to process.

Superior Distributing Corporation v. Hargrove et al., 312 P. 2d 893. Doerner, Rinehart & Stuart and Harry D. Moreland of Tulsa, for plaintiff in error. A. A. Berringer of Tulsa, for defendants in error.

taxation

GEORGIA

Company engaged exclusively in interstate commerce held not subject to income tax.

The Georgia Supreme Court on November 8, 1957, ruled as follows: "The Georgia Income Tax statute (Code, Ann. Supp., Section 92-3113) as applied to the plaintiff, a non-resident corporation with its home office and manufacturing plant outside of the State of Georgia, which maintained only a sales service office in this State which was used as headquarters by one of its sales representatives who spent about one-third of his time in that office or traveling within the State of Georgia, and in which office a small amount of office furniture, valued at approximately $1,000, was maintained, and one woman secretary was employed, and where the sales representative carried on the ordinary duties of a salesman in Georgia calling on customers and prospective customers, but no orders were accepted within the State of Georgia and all sales were made on an 'f. o. b. warehouse' basis and were completed at warehouses outside of the State of Georgia by deliveries to customers or to common carriers consigned to customers, violates both the commerce and due process clauses of the Federal Constitution, Code Sections 1-125(3) and 1-815, and the trial court erred in sustaining its validity as against such attacks."

In reaching this conclusion, appearing as the first paragraph of its decision, the court considered the amendment of the income tax law by an act approved February 16, 1950, which extended the law to corporations "owning property or doing business" in Georgia, and provided that "every such corporation shall be deemed to be doing business within this State if it engages within this State in any activities or transactions for the purpose of financial profit or gain, whether or not such corporation qualifies to do business in this State, and whether or not it maintains an office or place of doing business within this State, and whether or not any such activity or transaction is connected with interstate or foreign commerce."

*Stockham Valves & Fittings, Inc. v. Williams,** Georgia Supreme Court, November 8, 1957. Spalding, Sibley, Troutman, Meadow & Smith of Atlanta, and White, Bradley, Arant, All & Rose of Birmingham, for plaintiff in error. Sutherland, Asbill & Brennan; Crenshaw, Hansell, Ware & Brandon; Moise, Post, & Gardner; Arnall, Golden & Gregory; Bird & Howell; Smith, Kilpatrick, Cody, Rogers & McClatchey; Alston, Sibley, Miller, Spann & Shackelford; Jones, Williams, Dorsey & Kane; Powell, Goldstein, Frazer & Murphy, all of Atlanta, for parties at interest not party to record. Eugene Cook, Attorney General, William L. Norton, Jr., Assistant Attorney General, Ben F. Johnson, Jr., for defendant in error.

---

* The full text of this opinion is printed in the **State Tax Reporter,** Georgia, page 10,132.

MASSACHUSETTS

Inclusion of interstate gross receipts, in a numerator of one of the factors of the Massachusetts income tax apportionment formula upheld.

In the statutory net income tax apportionment formula, one of the three factors concerns the application of "a fraction whose numerator is the amount of the corporation's gross receipts from business assignable to this commonwealth as hereinafter provided, and whose denominator is the amount of the corporation's gross receipts from all its business." The taxpayer, a Massachusetts company, sought to have excluded from the numerator (1) sales by salesmen resident in Massachusetts to out-of-State customers, delivery being made outside Massachusetts from stock in Massachusetts, and (2) sales by salesmen resident outside Massachusetts to out-of-State customers, delivery being made outside of Massachusetts from stock in Massachusetts.

The taxpayer contended that if any part of the net income of the corporation was allocated for taxation to Massachusetts by a formula which measured such part by gross receipts from sales in interstate commerce, the tax on net income as measured by sales in interstate commerce would be in violation of the commerce clause of the Federal Constitution.

The Supreme Judicial Court of Massachusetts, after an exhaustive examination of pertinent decisions of the Supreme Court of the United States, in upholding the levy upon the taxpayer, observed that the tax is "an excise on corporate privileges based on a net income measure designed to reflect solely Massachusetts values," and that there was no risk of double taxation as "no other privileges or values." The court remarked that "the fact that net income from interstate transactions (and the value given to intrastate privileges by them) may be taken into account reasonably in the tax computations is immaterial."

State Tax Commission v. John H. Breck, Inc.,* 144 N. E. 2d 87. Joseph H. Elcock, Jr., Asst. Atty. General, (John Dane, Jr., of Boston, and Nicholas L. Metaxas, of Greenfield, with him), for State Tax Commission. Bennett Sanderson of Boston, for taxpayer.

* The full text of this opinion is printed in the **State Tax Reporter**, Massachusetts, page 10,146.

state legislation

California — Chapter 543 increased the fee for filing a certified copy of the charter of a foreign corporation with the Secretary of State upon qualification from $100 to $350.

Florida — S. B. 536 provides that, for the purpose of service of process, any person, firm or corporation which through brokers, jobbers, wholesalers or distributors, sells, consigns, leases, by any means whatsoever, tangible or intangible personal property to any person, firm or corporation in Florida, shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business or business venture in Florida.

Senate Bill 706 provides that the charter of a Florida corporation may be amended by filing with the Secretary of State a written statement, signed by all the directors and all the stockholders, manifesting their intention that the amendment set forth in the statement is made.

Illinois — Included among amendments effected by Senate Bill 266 are provisions relating to domestic corporations that (1) restated articles of incorporation are permitted, the filing fee being $50; (2) a corporation is permitted to issue scrip for fractional shares and may pay cash equal to the value of fractional shares, and (3) in the case of a merger or consolidation, notice of shareholders' meetings will be delivered not less than twenty nor more than forty days before the meeting.

North Carolina — H. B. 85 provides that notifications to corporations of suspension of articles of incorporation must be sent by certified mail, instead of registered mail.

Pennsylvania — Senate Bill 573 effected numerous amendments to the Pennsylvania Business Corporation Law.

Extending Corporate Activities into New States

Counsel for corporations planning, near the close of the year, to extend their activities into new states, in which qualification is contemplated, usually give careful consideration to the dates on which qualification is to be effected. It has been found, in many instances, that if qualification and the carrying on of intrastate activities, are deferred until after January 1, there may be savings of taxes which would otherwise be due early in the new year. Also, the preparation and filing of certain tax returns, due early in the new year if qualification and business activities occur prior to January 1, may be postponed for approximately a year, if these steps are delayed until after the new year begins.

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

DELAWARE. Docket No. 316. *Cottrell v. The Pawcatuck Company et al.*, 128 A. 2d 225. (The Corporation Journal, April—May, 1957, page 328.) Directors—business judgment—sale of "non-liquid" assets of heavy industry business managed by family. **Appeal filed, July 26, 1957. Motion to dismiss granted and appeal dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari denied, October 14, 1957. (78 S. Ct. 54.)**

ILLINOIS. Docket No. 405. *Turner v. Wright*, 142 N. E. 2d 84. (The Corporation Journal, June—July, 1957, page 354.) Illinois use tax—constitutionality. **Appeal filed, August 26, 1957. Motion to dismiss granted and appeal dismissed, per curiam, for want of a substantial federal question, November 18, 1957.**

MICHIGAN. Docket No. 26. *United States et al. v. City of Detroit*, 77 N. W. 2d 79. (The Corporation Journal, February—March, 1957, page 313.) Property tax on lessee of property leased by Federal government. **Appeal filed, October 8, 1956. Probable jurisdiction noted, January 14, 1957. (77 S. Ct. 353.)**

MINNESOTA. Docket No. 606. *Minnesota v. Northwestern States Portland Cement Co.*, 84 N. W. 2d 373. (The Corporation Journal, August—September, 1957, page 14.) Income tax—income received by corporation engaged only in interstate commerce. **Appeal filed, November 12, 1957.**

NEW HAMPSHIRE. Docket No. 216. *W. H. Elliott & Sons Co., Inc. v. Nuodex Products Co., Inc.*, 243 F. 2d 116. (The Corporation Journal, December 1957—January 1958, page 53.) Service of process—doing business—solicitation of orders by factor. **Petition for writ of certiorari filed, June 22, 1957. Petition for writ of certiorari denied, October 14, 1957.**

WASHINGTON. Docket No. 184. *White v. Washington*, 306 P. 2d 230. (The Corporation Journal, October—November, page 36.) Sales tax—vending machine sales in exempt bracket. **Appeal filed, June 11, 1957. Motion to dismiss granted and appeal dismissed for want of a substantial federal question, October 14, 1957.**

---

* Data compiled from **CCH U. S. Supreme Court Bulletin.**

regulations and rulings

Arizona — A contractor for the federal government need not obtain an Arizona contractor's license to work on a federal project. Where the state relinquished its jurisdiction over property purchased by the federal government, it also relinquished its power of regulation and control in matters which ordinarily fall within the state's police power. The regulation and control of the construction industry is a matter within such police power. The various sub-contractors who submit bids, enter into contracts and perform work for the prime contractor on such federal projects are not required to be licensed by the state of Arizona. (Opinion of the Attorney General, State Tax Reporter, Arizona, ¶ 200-024.)

Arkansas — The gross receipts tax is not applicable to used machinery and supplies. (Opinion of the Attorney General, State Tax Reporter, Arkansas, ¶ 65-025.)

District of Columbia — The cash and securities received by stockholders of a corporation at the time of its dissolution, with the exception of the amount representing capital stock, are dividends and are taxable as such, even though a section of the Act imposing the Income and Franchise Tax exempts gains from the sale or exchange of assets held for more than two years. (Tax Court Ruling, District of Columbia Tax Reporter, ¶ 14-098.)

Florida — Where a business corporation has issued and has outstanding only a portion of the capital stock authorized by its corporate charter, the unissued stock is not subject to ad valorem taxation as treasury stock by the county of its principal place of business. (Opinion of the Attorney General, State Tax Reporter, Florida ¶ 200-110.)

Idaho — The place of sale, for corporation income tax apportionment purposes, is the sales office, agency, or other selling unit where orders are received and accepted by the vendor, regardless of the shipping point or destination of the merchandise. (Letter of Tax Collector, State Tax Reporter, Idaho, ¶ 14-001.)

Michigan — No specific statutory exemption from sales or use taxes is granted retailers, launderers or dry cleaners on sales to them or purchases by them of packaging materials. However, sales to or purchases of such items by a retailer are excluded by both the sales and use tax acts as being sales for resale or purchases for resale respectively, and are therefore exempt from the sales and use taxes. (Opinion of the Attorney General, State Tax Reporter, Michigan ¶ 200-295.)

Minnesota — Restaurants operated for not more than one week at a fair conducted by a county agricultural society are exempt from city food and refreshment license requirements. (Opinion of the Attorney General, State Tax Reporter, Minnesota, ¶ 34-506.)

some important matters

For December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Annual Application Fee for permit to do business due February 1.
Quarterly Withholding Tax due on or before January 31.

Alaska — Annual Corporation Tax due on or before January 1.

Arizona — Quarterly Withholding Tax due on or before January 31.

Colorado — Quarterly Withholding Tax due on or before January 31.

Delaware — Annual Report due on or before first Tuesday in January.—Domestic Corporations.
Withholding at Source Returns due January 31.—Corporations paying compensation to Delaware employees.

District of Columbia — Annual Report published and filed between January 1 and January 20.—Domestic Corporations formed under 1901 Act.
Application for license in connection with District Franchise (Income) Tax due before January 1.

Georgia — Annual License Tax Report due on or before January 1.

Indiana — Information and Withholding Returns due on or before January 31.

Iowa — Quarterly Retail Sales Tax due on or before January 31.

Kentucky — Quarterly Withholding Tax due on or before January 31.

Louisiana — Annual Report due February 1.—Domestic Corporations.

Maryland — Returns of Information at the source and Quarterly Withholding Tax due on or before January 31.

Missouri — Annual Franchise Tax due on or before December 31.
Quarterly Retail Sales Tax due on or before January 15.

New Hampshire — Annual Maintenance Fee due on first business day of January.—Foreign Corporations.

North Dakota — Quarterly Retail Sales Tax due on or before January 31.

Oregon — Quarterly Withholding Tax due on or before January 31.

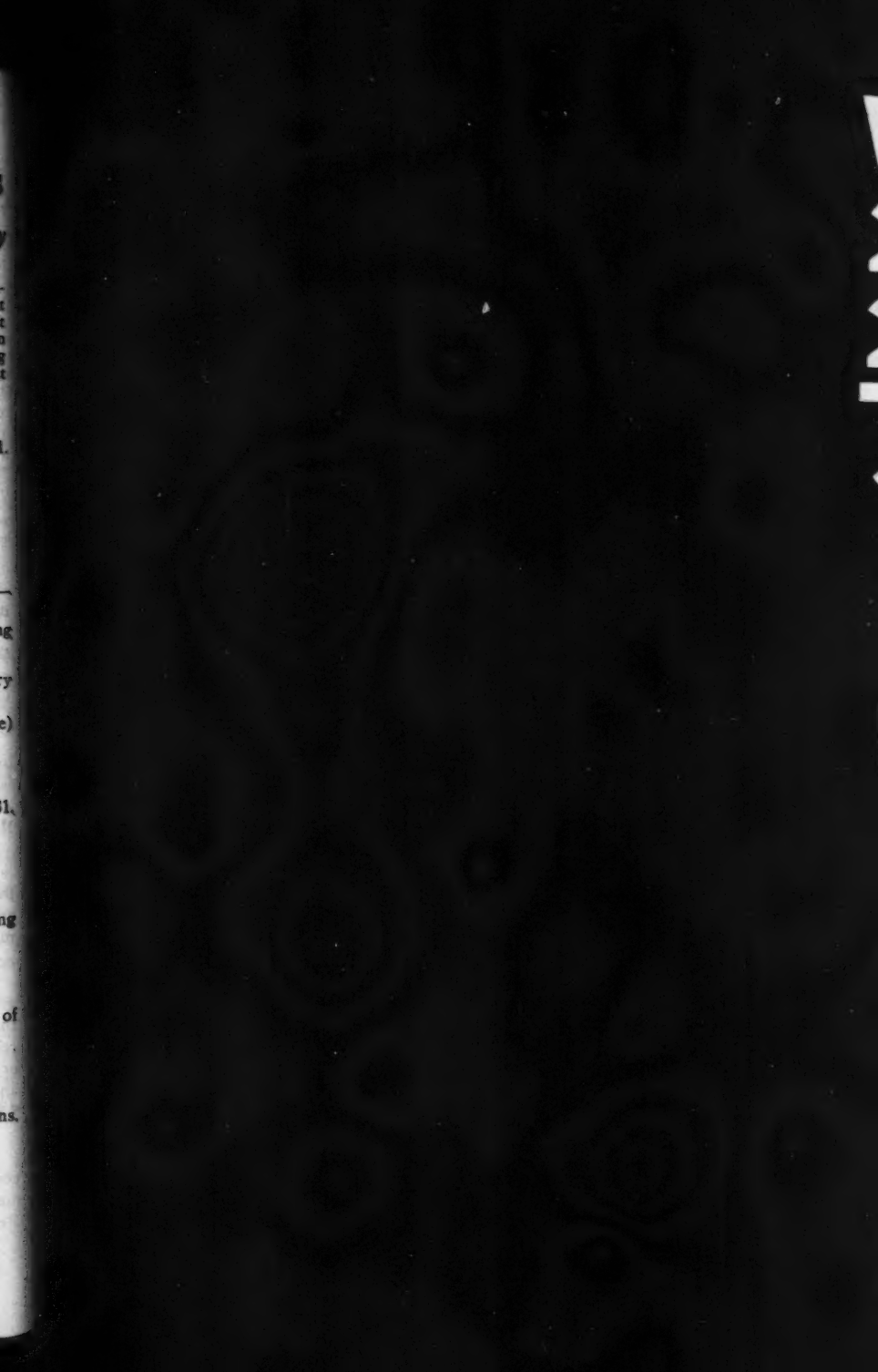
South Carolina — Annual Statement due January 31.—Foreign Corporations.

South Dakota — Quarterly Retail Sales Tax due on or before January 15.

Utah — Quarterly Retail Sales Tax due on or before January 30.

Vermont — Quarterly Withholding Tax due on or before January 31.

West Virginia — Annual Business (Gross Sales) Tax due January 31.



H

W

S

C

A

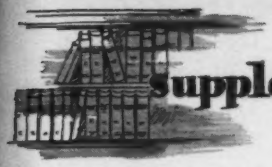
B

C

A

S

S



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

What Constitutes Doing Business (1956 Edition). A 182-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Spot Stocks Mean More Sales. A review of the advantages *and* dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

Corporate Tightrope Walking. Of interest to counsel for and the officers of any corporation carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

Before and After Qualification. A complete list of aids and services—including those supplied without charge—which CT furnishes for lawyers working on foreign corporation matters.

Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

A Pretty Penny . . . Gone! What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

THE CORPORATION TRUST COMPANY
120 Broadway, New York 5, N. Y.

Form 3547 requested

The

CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers and accountants upon written request to any of the company's offices.

CT SYSTEM

The Corporation Trust Company
CT Corporation System
and Associated Companies

Albany 10 .....4 S. Hawk Street	Houston 2 .....608 Fannin St.
Atlanta 3 ..... Healey Building	Jersey City 2 . 15 Exchange Place
Baltimore 2 ... . .. 10 Light Street	Los Angeles 13 . 510 S. Spring St.
Boston 9 .....10 Post Office Square	Minneapolis 1, Midland Bank Bldg.
Buffalo 3..Ellicott Square Building	New York 5 .....120 Broadway
Chicago 4 .. 208 S. La Salle Street	Philadelphia 9....123 So. Broad St.
Cincinnati 2.....Carew Tower	Pittsburgh 22.....Oliver Building
Cleveland 14.....Union Com. Bldg.	San Francisco 4 .... Mills Building
Dallas 1, Republic Nat'l Bank Bldg.	Seattle 4 .... 1000 Second Avenue
Denver 2 .....1700 Broadway	St. Louis 2 . 314 North Broadway
Detroit 26 .....Dime Building	Washington 4.....Munsey Building
Dover, Del.....30 Dover Green	Wilmington 99..100 West 10th St.